

## Data Security: Beware Of Hidden Data In Electronic Documents

By Dave Orren  
Guest columnist  
Department of Health

### Appropriate security safeguards

The Data Practices Act requires government entities to "establish appropriate security safeguards for all records containing data on individuals." Minnesota Statutes, section 13.05, subdivision 5.

### Data hidden in electronic documents

There are a multitude of things a government entity must do to protect the security of the data it maintains. This article discusses only one small area of data security; namely, inadvertent disclosure of data that are hidden in electronic documents.

### Be aware

The best way to protect against inadvertent disclosures of hidden data is to understand common ways that data are hidden in electronic documents. For example, did you know that when you track changes in MSWord, but don't show the changes on the screen, all the changes are saved in the document, even though you can't see them?

### Fun with data practices

We have provided links in this newsletter to three documents that illustrate several ways data are hidden in electronic documents. Each document shows a different software quirk to be aware of and to avoid.

save them as files on your computer. Each document has instructions for how to see the data. At the end of each document are tips on how to avoid inadvertent disclosures of hidden data. Note: IPAD was unable to post the WordPerfect document. If you would like an electronic copy emailed to you, contact staff at [info.ipad@state.mn.us](mailto:info.ipad@state.mn.us).

### The documents

The document "[hiddenchanges.doc](#)" is perhaps the most interesting. It shows how data sometimes can hide in a document when you use the "Track Changes" tool -- and then reappear when they shouldn't.

The document "[viewversusopen.doc](#)" shows how different views of a document unintentionally might disclose data that you don't want disclosed.

The document "[hiddencells.xls](#)" shows how information can hide in an Excel spreadsheet -- and then pop up again when you don't want this to happen.

The WordPerfect document shows how WordPerfect saves "Undo" items from the last time you had the document open.

### Comments or questions

Let me know if you have any comments or questions or have other examples of hidden data in electronic documents.

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### To get the documents

After opening the Word and Excel documents in your Internet browser,

# Advice from the Swamp Fox\*

*\*Francis Marion, "the Swamp Fox," was a colonial officer from South Carolina in the Revolutionary War renowned for hiding in swamps while carrying out guerilla warfare against the British.*

## Dear Swamp Fox:

I am the responsible authority for Frozen Loon County Social Services. A neighboring county social services department has sent us a consent form that one of our clients signed six months ago. The consent is to release data from our files to the neighboring county. Staff members disagree about how much data we can release based on this consent. One group thinks we can disclose only the data that are identified in the consent and that existed at the time the consent was signed. The other believes we can disclose all of the data that are identified in the consent and that we have collected/created to date. Would you please settle our dispute? Thanks.

*Frozen Loon Social Services RA*

## Dear Frozen Loon Social Services RA:

I'm happy to help you sort out this dispute. The short answer to your question is: You can disclose the data that were in the county's possession on the date the consent was signed. Now let me explain how I got to that result.

A social services department maintains private data about individuals (Section 13.46, subdivision 2). An individual can consent to the release of private data to a third party (Section 13.05, subdivi-

sion 4(d)). The requirements for an informed consent are found in Minnesota Rules, 1205.1400, subparts 3 and 4. The requirements include:

- The individual has the mental capacity to make a decision whether to give consent.
- The individual understands the consequences of giving the consent.
- The individual has not been coerced by the government entity into giving consent.
- The individual understands the necessity for giving the informed consent.
- The individual has given his/her consent in writing.
- The individual can give consent to release all, some or none of the data requested.

These requirements can be met only if the data exist at the time the consent is signed. Because an individual cannot know what data will be collected or created in the future, there is no way for that individual to give informed consent as to those unknown data.

For Frozen Loon County Social Services to honor the consent that has been received, the disclosure needs to be limited to the data that are described in the consent and that were in existence at the time the consent was signed.

More information about informed consent is available in *From the IPAD Toolbox*, a column elsewhere in this edition of the newsletter.

*The Swamp Fox*

## Opinion Highlights

*The following are highlights of recent advisory opinions by the Commissioner of Administration. All Commissioner's opinions are available on the IPAD web site at [www.ipad.state.mn.us](http://www.ipad.state.mn.us).*

**04-059:** An individual asked whether the Eagan Charter Commission is subject to the requirements of Minnesota Statutes, Chapter 13. Political subdivisions, including commissions created pursuant to law, are subject to Chapter 13. (See section 13.02, subdivision 11.) Minnesota Statutes, Chapter 410, contains the enabling legislation that grants charter commissions their powers and responsibilities. Thus, the Commissioner concluded that the Eagan Charter Commission is a political subdivision and is subject to Chapter 13.

**04-065:** An individual asked whether the Mahtomedi School District complied with Chapter 13 when it

denied access to certain directory (public) information about a student's parents. The District's policy limited access to directory information about parents to "matters pertaining to school district business, functions, or purposes." In opining that the District did not comply with Chapter 13, the Commissioner took the position that the District cannot set limits on the use of directory information.

**04-071:** The Minnesota Joint Underwriting Association (MJUA) asked about the classification of the names and addresses of its policyholders. The MJUA noted that the Commissioner previously opined, in Advisory Opinion 96-005, that data collected and maintained by the MJUA are public pursuant to section 13.03, subdivision 1. The

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# From the IPAD Toolbox\*

*\*From the IPAD Toolbox highlights resources for citizens to use in exercising their rights, and for government entities to use in improving compliance with Chapter 13 and other data practices laws.*

## Informed Consent for the Release of Government Data

IPAD regularly receives inquiries about the requirements for obtaining an informed consent to release private data on individuals. These requirements are set forth at Minnesota Statutes section 13.05, subdivision 4(d), and Minnesota Rules 1205.1400. IPAD's website offers several resources for understanding when it is necessary to obtain the informed consent of a data subject in order to use or release data about him/her in a lawful manner, and how that informed consent may be written.

The most comprehensive of these resources is the document, *Informed Consents for the Use and Release of Data*, on the IPAD website at [www.ipad.state.mn.us/docs/consent.doc](http://www.ipad.state.mn.us/docs/consent.doc). This document explains how data practices laws control the release of private and confidential data on individuals, discusses when an informed consent must be obtained, and includes a model consent form. The form is designed as a template. Guidance is provided in adapting the template to the specific needs of the government entity using it so that the consent form prepared by the entity complies with applicable data practices laws.

Other documents on the IPAD website that may be helpful include: *Private Data on Individuals: How Access is Controlled by the Minnesota Government Data Practices Act*, at [www.ipad.state.mn.us/docs/private.doc](http://www.ipad.state.mn.us/docs/private.doc), and *Data on Individuals: Lawful Collection, Storage, Use and Release*, at [www.ipad.state.mn.us/docs/how\\_do.doc](http://www.ipad.state.mn.us/docs/how_do.doc).

Additionally, the Commissioner of Administration has issued a number of advisory opinions that discuss the purpose, content and appropriate use of an informed consent. These opinions are identified in the document, *Topical Index to Advisory Opinions*, at [www.ipad.state.mn.us/docs/opindex.doc](http://www.ipad.state.mn.us/docs/opindex.doc). Within this index, see the *Informed consent* subject category.

Opinions in this subject category address such issues as whether an entity may rely on an informed consent to create new data (it may not); whether a Tennessean warning notice and a consent may be combined (they may not); whether consent to release data may be obtained before the data are collected or created (it may not); and whether an entity lawfully may obtain consent to "share" data between and among entities, rather than specifically identifying the person or entity that maintains the data, the person or entity that will receive the data, and the specific data to be released (a broad consent to "share" data would not meet the standards set out at Minnesota Rules 1205.1400).

## IPAD Toolbox

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# Court Case Update

The **Supreme Court** wrote the final chapter in the media's litigation to get the names of the finalists for the position of president of the University of Minnesota. The media had requested "...all reasonable costs, disbursements, and attorneys fees..." in an amount exceeding \$300,000. In its November 23, 2004, order, the Supreme Court stated that neither the Minnesota Government Data Practices Act nor the Open Meeting Law mandate an award of costs and attorneys fees. Finding that the University's position was based on constitutional principle and had a reasonable basis in law, the request was denied. *Star Tribune Company v. University Board of Regents*, (A03-124 and A03-155 issued Nov. 23, 2004).

The **Court of Appeals** issued an unpublished opinion on October 12, 2004, in *Seeber v. Weiers* (A04-288; available at [www.courts.state.mn.us](http://www.courts.state.mn.us)). Mr. Seeber sought disclosure of all data about his child

held by Rice County Social Services. The County did not maintain a file about the child. Rather, the County maintained data about the child in connection with a file concerning the child's other parent.

Following Advisory Opinion 02-042 from the Commissioner of Administration, the County provided Mr. Seeber with access to data about his child by redacting data from the mother's file. Mr. Seeber then asked for access to the unredacted file and was denied. The district court granted the County's motion for summary judgment and dismissed the case.

The Court of Appeals found that the data in question were private data (section 13.46) and that the mother was the subject of the data, not the child. As the data about the child were incidental to the data about the mother (section 13.02, subdivision 5), Mr. Seeber was not entitled to access any data held by the County other than the data that already had been provided.

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MJUA also noted that that opinion did not contain discussion of Minnesota Statutes, Chapter 72, or the federal Gramm-Leach-Bliley Act, which was enacted after 1996. After reviewing state and federal law, the Commissioner opined that, without obtaining prior consent, the MJUA is prohibited from releasing the names and addresses of its policyholders who are individuals.

**04-075:** Washington County asked about the classification of data related to a case in which a complaint is made against a licensed day care provider and no disciplinary, corrective, or other enforcement action is taken against the licensee. The Commissioner solicited comments from the Minnesota Department of Human Services (DHS). The Commissioner concurred with DHS' position and opined that the data are public pursuant to section 13.46, subdivision 4(b)(1).

**04-077:** The *Saint Paul Pioneer Press* asked whether the City of Saint Paul responded appropriately to a request for addresses of all STAR (Neighborhood Sales Tax Revitalization Program) grant awardees. The City denied access, asserting the data are not public "customer lists" pursuant to Minnesota Statutes, section 13.591, business data. The Commissioner disagreed and opined that the data are public pursuant to section 13.03, subdivision 1.



**Information Policy  
Analysis Division**

## Questions or comments?

Contact the Information Policy Analysis Division at 201 Administration Building, 50 Sherburne Avenue, St. Paul, MN, 55155; phone 800.657.3721 or 651.296.6733; fax 651.205.4219; email [info.ipad@state.mn.us](mailto:info.ipad@state.mn.us).

Staff: Laurie Beyer-Kropuenske, *Director*, Katie Engler, Janet Hey, Brooke Manley, Linda Miller and Catherine Scott.

This document can be made available in alternative formats, such as large print, Braille or audiotape by calling 651.296.6733.

For TTY communication, contact the Minnesota Relay Service at 800.627.3529 and ask them to place a call to 651.296.6733.

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# Keep Track of Legislation

January 4, 2005, marks the beginning of the 2005 Minnesota Legislative Session.

If you are following the progress of certain bills, you may want to visit the Legislature's website at [www.leg.state.mn.us](http://www.leg.state.mn.us) and sign up for the MyBills Subscription Service. Create your list by adding House and Senate bills by bill number, subject, or author. The service is updated daily and displays the legislative status of each bill on your list.

Also at [www.leg.state.mn.us](http://www.leg.state.mn.us), you will find bill introductions and related information, such as text and status, as well as floor and committee schedule information.

## IPAD Toolbox

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Worth noting in this subject category are opinions that compare requirements for obtaining an informed consent with requirements for providing a Tennessee warning notice. These differ significantly in nature, purpose and timing. These differences and the obligations they impose on the entity also are discussed in the document, *Model Policy: Public Access to Government Data and Rights of Subjects of Data*, at [www.ipad.state.mn.us/docs/model\\_policy.doc](http://www.ipad.state.mn.us/docs/model_policy.doc). See Section IV of the model policy, pages 33 to 36, and Section VI, pages 65 to 68.

IPAD sometimes receives inquiries about whether a government entity may release private data in response to a consent form that was prepared by another agency or person. A consent form that meets all of the standards in the Rules is valid regardless of who prepared the form. However, before releasing data in response to a completed consent form that was prepared by another agency or person, the government entity should examine the form carefully to ensure that it meets all the standards in the Rules. Alternatively, the entity may require that an informed consent be given by using the entity's own consent form(s).

Last, to address inquiries concerning the seven elements of an informed consent that are enumerated in section 13.05, subdivision 4(d), note that these specific elements are required only when obtaining a consent to release private data to an insurer.

*The Carpenter*